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Before the
Federal Communications Commission
Washington, D.C. 20554

AUG 31 3 36 PM '93

MM Docket No. 93-257

DISPATCHED BY

In the Matter of

DAVID & SHERRY PIKE

Licensees of Station KRAN(AM)
Morton, Texas

Order to Show Cause Why the
License for Station KRAN(AM)
Morton, Texas Should
Not be Revoked

**ORDER TO SHOW CAUSE
AND
HEARING DESIGNATION ORDER**

Adopted: August 18, 1993;

Released: August 31, 1993

By the Chief, Audio Services Division:

1. The Chief, Audio Services Division, Mass Media Bureau, has before him for consideration: (a) the license held by David and Sherry Pike, for Station KRAN(AM), Morton, Texas; and (b) the results of an investigation into KRAN(AM)'s silent status.¹

2. The Commission's records indicate that KRAN(AM) has been off the air since March 13, 1991. The licensee's last request for authority to remain silent was granted

through July 10, 1992 by letter dated April 10, 1992, from the Chief, AM Branch, Audio Services Division, Mass Media Bureau. In that letter, Mr. Pike was advised that any future requests for authority to remain silent must be accompanied by a detailed summary of steps being taken to return KRAN(AM) to on-air operations. That letter, however, was returned to the Commission as undeliverable. By letters dated May 7, 1992 and June 26, 1992, the Chief, AM Branch, requested that Mr. Pike file an updated address with the Commission in order to comply with 47 C.F.R. Section 1.5.² The June 26, 1992 letter was returned to the Commission as undeliverable. After numerous attempts, the staff finally located Mr. Pike by telephone on July 21, 1992. At that time, Mr. Pike asserted that he had responded to the letter of May 7, 1992 and that he had, in fact, provided the Commission with an updated address.³ Mr. Pike was informed that he was in violation of the Commission's rules and was asked to resubmit his letter along with information regarding the station's current silence. A current address was also obtained from him at that time. In his written response, received July 28, 1992, Mr. Pike stated that he was attempting to sell the station and that he had located an interested party.⁴ He also requested an extension of his authority to remain silent. This request has not been acted upon because Mr. Pike failed to respond to subsequent Commission requests, dated August 7, 1992 and October 23, 1992, by the Chief, AM Branch, for additional information needed to complete processing.⁵ Accordingly, his request for further extension of silent authority will be dismissed herein for failure to prosecute. Consequently, KRAN(AM) is currently off the air without authority. Furthermore, because it appears that no substantial progress has been made by Mr. Pike to return KRAN(AM) to on-air status and Mr. Pike has not surrendered his license, Mr. Pike is in apparent violation of Sections 73.1740(a)(4)⁶ (Minimum Operating Schedule) and 73.1750⁷ (Discontinuance of Operation) of the Commission's Rules.

3. Accordingly, IT IS ORDERED, That David Pike's request of July 28, 1992, requesting authority to remain silent, IS HEREBY DISMISSED for failure to prosecute.

¹ The Mass Media Bureau has been delegated authority to issue and release Show Cause Orders in cases involving silent broadcast stations. See *Debrine Communications, Inc.*, 7 FCC Rcd 2118 (1992).

² This section states:

(a) Each licensee shall furnish the Commission with an address to be used by the Commission in serving documents or directing correspondence to that licensee. Unless any licensee advises the Commission to the contrary, the address contained in the licensee's most recent application will be used by the Commission for this purpose.

⁴⁷ C.F.R. Sec. 1.5.

³ Subsequent research of the relevant Commission records did not, however, confirm Mr. Pike's account.

⁴ We note that no application for assignment of license has since been filed by Mr. Pike.

⁵ Mr. Pike failed to certify that he is not subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988, 21 U.S.C. Sec. 862(a). This certification is required of every individual making an application to the Commission. See *In the Matter of Amendment of Part 1 of the Commission's Rules to*

Implement Section 5301 of the Anti Drug Abuse Act of 1988, 6 FCC Rcd 7551 (1991).

⁶ Section 73.1740(a)(4) provides:

"In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary."

⁷ Section 73.1750 provides:

4. IT IS FURTHER ORDERED, That pursuant to Section 312(a)(3) and (4) of the Communications Act of 1934, as amended, David and Sherry Pike are DIRECTED TO SHOW CAUSE why the license for Station KRAN(AM) should not be REVOKED, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

(a) To determine whether David and Sherry Pike have the capability and intent to expeditiously resume broadcast operations of KRAN(AM) consistent with the Commission's Rules.

(b) To determine whether David and Sherry Pike have violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether David and Sherry Pike are qualified to be and remain the licensee of Station KRAN(AM).

5. IT IS FURTHER ORDERED, That the Mass Media Bureau SHALL SERVE upon the licensees, within thirty (30) days of the release of this Order, a BILL OF PARTICULARS, with respect to the issues specified above.

6. IT IS FURTHER ORDERED, That, pursuant to Section 312(d) of the Communications Act of 1934, as amended, both the BURDEN OF PROCEEDING with the introduction of evidence and the BURDEN OF PROOF with respect to the issues specified above shall be upon the MASS MEDIA BUREAU.

7. IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard, the licensees, pursuant to Section 1.91(c) of the Commission's Rules, SHALL FILE with the Commission within thirty (30) days of the receipt of this Order a WRITTEN APPEARANCE stating that they will appear at the hearing and present evidence on the matters specified in the Order. If the licensees fail to file a written appearance within the time specified, or within thirty (30) days of receipt of this Order the licensees file a written statement expressly waiving their right to a hearing, the licensees' right to a hearing SHALL BE DEEMED TO BE WAIVED. In the event the right to a hearing is waived, the Presiding Judge, or the Chief Administrative Law Judge if no Presiding Judge has been designated, SHALL TERMINATE the hearing proceeding and CERTIFY this case to the Commission in the regular course of business, and an appropriate Order shall be entered.⁸

8. IT IS FURTHER ORDERED, That, if it is determined that the hearing record does not warrant an Order revoking the license for KRAN(AM), Morton, Texas, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an ORDER OF FORFEITURE shall be issued against the

licensees in an amount not exceeding \$250,000.00 for the willful and/or repeated violation of Section 73.1740 and/or 73.1750 of the Commission's Rules.

9. IT IS FURTHER ORDERED, That this document constitutes a NOTICE OF APPARENT LIABILITY for willful and repeated violation of Section 73.1740 and/or 73.1750 of the Commission's Rules. The Commission has determined that in every case designated for hearing involving the potential revocation of a station license, it shall, as a matter of course, include a forfeiture notice so as to maintain the fullest possible flexibility of action. Since the practice of including such forfeiture notice is a routine procedure, such inclusion here should not be viewed in any manner as suggesting or otherwise indicating what the initial or final disposition of this proceeding should be.

FEDERAL COMMUNICATIONS COMMISSION

Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

⁸ "The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the li-

censee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation."

⁸ The Mass Media Bureau has been delegated authority to issue Revocation Orders in cases involving silent broadcast stations. See *Radio Northwest Broadcasting Company*, 4 FCC Rcd 596, n.3 (1989).